LIBRARY
SUPREME COURT, U.S.

No. 754

FILED
APR 23 1955
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1954

UNITED STATES OF AMERICA, APPELLANT

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

STATEMENT AS TO JURISDICTION

SIMON E. SOBELOFF,
Solicitor General, Department of Justice,
Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Statute involved	2
Question presented	3
Statement	4
The question is substantial	6
Conclusion	14
Appendix	15

CITATIONS

Cases:	
American Newspaper Publishers Ass'n. v. *N. L. R. B.*, 345 U. S. 100	6
N. L. R. B. v. *Gamble Enterprises, Inc.*, 345 U. S. 117	6
United States v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893	8, 13
United States v. *Local 807*, 315 U. S. 521	8, 9, 10, 13
Statutes:	
Copeland Act, 48 Stat. 979	9
18 U. S. C. 3731	7
Hobbs Act, 62 Stat. 793, 18 U. S. C. 1951	2, 6, 10
Public Law No. 486, 79th Cong., 2d Sess., 60 Stat. 420	10
Miscellaneous:	
89 Cong. Rec. 3201	11
89 Cong. Rec. 3202	12
89 Cong. Rec. 3220	12
91 Cong. Rec. 11841	11
91 Cong. Rec. 11842	10
91 Cong. Rec. 11900	11
91 Cong. Rec. 11907	11
91 Cong. Rec. 11911	11

941029—55——1

Miscellaneous—Continued

	Page
Hearings before Subcommittee No. 3 of the Committee on the Judiciary of the House of Representatives on H. R. 6872 and H. R. 7067, 77th Cong., 2d Sess	16
H. R. 6872, 77th Cong., 2d Sess	10
H. R. 653, 78th Cong	11
H. R. 32, 79th Cong., 1st Sess	10
H. Rep. No. 238, 79th Cong., 1st Sess., p. 10	9

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. ———

UNITED STATES OF AMERICA, APPELLANT

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

STATEMENT AS TO JURISDICTION

OPINION BELOW

The opinion of the District Court arresting judgment of conviction has not been reported. A copy is annexed hereto as an Appendix.

JURISDICTION

On January 24, 1955, the District Court entered an order arresting the judgment of conviction on the two counts on which appellees had been found

guilty.[1] A notice of appeal to this Court was filed in the District Court on February 21, 1955. The jurisdiction of this Court to review on direct appeal the decision of the District Court arresting the judgment of conviction for insufficiency of the indictment, based on a construction of the statute upon which it is founded, is conferred by 18 U. S. C. 3731.

STATUTE INVOLVED

18 U. S. C. 1951, 62 Stat. 793, commonly referred to as the Hobbs Act, provides:

> § 1951. *Interference with commerce by threats or violence.*
>
> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
>
> (b) As used in this section—
>
> (1) The term "robbery" means the unlawful taking or obtaining of personal

---

[1] Appellees, in designating for transmission to this Court the entire record in the case, have indicated that they intend to argue that the order, although designated in arrest of judgment, is based on the evidence. This issue is discussed *infra*, p. 7, fn. 2.

property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45.

QUESTION PRESENTED

Whether the obstruction of interstate commerce or the attempt to do so by the wrongful use of actual and threatened force, violence and fear, in

an attempt to compel an employer to pay wages for imposed, unwanted, superfluous and fictitious services of laborers, is a violation of 18 U. S. C. 1951.

STATEMENT

On December 17, 1953, an indictment in nine counts charging violations of 18 U. S. C. 1951 was returned against the defendants in the United States District Court for the Southern District of Illinois, Southern Division. Counts one and two, on which defendants were found guilty, charged that they had obstructed, delayed, and affected interstate commerce and attempted to do so by extortion. The extortion alleged was that defendants attempted, through the unlawful use of actual and threatened force, violence and fear, to obtain property from contractors engaged in interstate commerce. The contractors were alleged to be then engaged in executing a contract with the United States for the maintenance of a levee bordering the Chain of Rocks Canal, which was a channel and conduit for traffic on the Mississippi River and its tributaries. The property alleged to have been demanded was money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers, commonly known as swampers, in connection with the operation of machinery and equipment being used by the contractors in the execution of their contracts.

The court submitted four of the nine counts to the jury, which returned a verdict of guilty as to both defendants on counts one and two and not guilty on the other counts. Defendants filed motions in arrest of judgment as well as motions for a judgment of acquittal and, in the alternative, for a new trial. The court denied defendants' motions for acquittal and, in the alternative, for a new trial, but granted their motions in arrest of judgment on the basis that 18 U. S. C. 1951, as construed by the court, does not apply to the facts alleged in the indictment. The memorandum opinion states:

> * * * the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:
>
> 1. That the Court is without jurisdiction of the offense because the facts alleged in the indictment fail to set forth an offense against the United States such as to give this Court jurisdiction.
>
> 2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

After measuring the indictment and its allegations against the language of 18 U. S. C. 1951, the District Court concluded as a matter of

law that no crime was charged in the indictment within the intendment and reach of Section 1951. It reasoned that since appellee Green was acting "within his rights and responsibilities as a Union representative," and since all "featherbedding" is not an unfair labor practice (*American Newspaper Publishers Assn.* v. *N. L. R. B.*, 345 U. S. 100; *N. L. R. B.* v. *Gamble Enterprises, Inc.*, 345 U. S. 117), the use of force and violence in connection with feather-bedding demands was not within the purview of the statute. In this connection it stated:

> *After reading the Indictment*, I concur with the decision of Judge George H. Moore * * * in a similar *Indictment*, and I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor. [Emphasis added.]

THE QUESTION IS SUBSTANTIAL

1. The Hobbs Act, 18 U. S. C. 1951, *supra*, pp. 2–3, so far as here relevant, punishes anyone who delays, obstructs or affects commerce by extortion, which it defines as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *." The indictment charged appellees with obstructing, delaying and affecting

commerce by extortion in that they attempted to obtain money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers from Arthur W. Terry, Jr., and Ralph Wright, Jr., with their consent, induced by the wrongful use of actual and threatened force, violence and fear. Thus, the indictment follows the statute and alleges facts which fall squarely within its literal terms. The District Court has held, nevertheless, that the indictment does not state an offense under the statute because the use of force and violence was for a union objective which is not in itself necessarily unlawful.

This construction of the Hobbs Act, evidently influenced by constitutional doubts as well as by judgments as to what the purpose of Congress

---

* As we have noted (fn. 1, *supra*, p. 2), the appellees apparently propose to argue that the order below is based upon the evidence and not, as its designation shows, upon a holding that the indictment fails to state an offense under the statute as construed by the District Court. However, apart from the fact that the District Court expressly denied appellees' motions for judgment of acquittal and for new trial and granted the motion in arrest of judgment (App. *infra*, p. 15), the opinion below (see quotations *supra*, pp. 5–6) makes clear that the court's order was based upon "reading the Indictment" and "construction of the Anti-Racketeering Act * * *." Its decision was plainly stated as a refusal "to interpret the act in question as covering the type of activity *charged in the Indictment* * * *." (Emphasis added.) Thus, the opinion leaves no doubt, we believe, of the Government's right to prosecute this appeal under 18 U. S. C. 3731.

must have been (see Appendix, *infra*, pp. 16, 17–19), is directly contrary to the interpretation adopted by the Court of Appeals for the Third Circuit in *United States* v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893. In the latter decision, after reviewing the legislative history of the Hobbs Act, the majority said (198 F. 2d at 891–892):

> In these circumstances, the conclusion seems inescapable that Congress intended that the language used in the 1946 statute be broad enough to include, in proper cases, the forced payment of wages. * * * It is enough for this case, and all we decide, that payment of money for imposed, unwanted and superfluous services such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the statute.

Thus, the decision below exonerates appellees from liability for the very same kind of conduct as that which resulted in imprisonment for Kemble. In the interests of equal justice, the contrariety of views between the Third Circuit and the court below should be resolved by this Court.

2. We believe, moreover, that the court below has erred. The Hobbs Act was enacted for the specific purpose of overcoming the effect of this Court's decision in *United States* v. *Local 807*,

315 U. S. 521, in which conduct similar to that alleged here had been held not to constitute an offense under the predecessor Anti-Racketeering Act of 1934.[3] In the *Local 807* case, a union and some of its officers and members had been indicted and convicted for obstructing interstate commerce through extortion in that, by threats and violence, the defendants were stopping out-of-state truckdrivers and forcing them either to turn their trucks over to a union driver for delivery and unloading in New York or to pay the equivalent of a day's wages. The decision of this Court turned on the provision of the 1934 Act expressly excluding from its coverage "the payment of wages by a bona-fide employer to a bona-fide employee." The trial judge had refused to charge that it was not an offense under the 1934 Act to endeavor to obtain employment by threats or violence if the intention of the defendant was actually to work for the wages received.[4] See 315 U. S. at 538. This Court held the refusal erroneous, interpreting the statutory exception to apply if the objective of the defendants was to obtain the opportunity to work for the money but to accept the money even if the employers refused to permit them to work. The emphasis on the proviso of the 1934 Act indicates that, except for that proviso, the acts of violence would have been

---

[3] H. Rep. No. 238, 79th Cong., 1st Sess., p. 10.

[4] 48 Stat. 979, 73d Cong., 2d Sess. (1934), also known as the Copeland Act.

within the statute. Indeed, the opinion explicitly states, 315 U. S. at 536, that the holding there "does not mean that such activities are beyond the reach of federal legislative control."

Responding directly to this observation, the Hobbs Act eliminated the proviso. And the legislative history leaves little doubt that this modification was designed precisely to extend the reach of the antiracketeering prohibitions to conduct like that involved in the *Local 807* case and here. On March 21, 1942, twenty-five days after the *Local 807* decision, Mr. Hobbs introduced H. R. 6872 as an amendment to the Anti-Racketeering Act of 1934.[6] Although the statute here in question was a successor bill,[7] not finally enacted until July 3, 1946,[8] the purpose of altering the *Local 807* result remained constant and was clearly stated throughout. Thus, speaking on behalf of the bill which was approved, Congressman Michener said (91 Cong. Rec. 11842):

> A decision of the Supreme Court of the United States, rendered in 1942, makes this amendment to the law necessary if the rights and liberties of our people are to be assured.

---

[6] See Hearings before Subcommittee No. 3 of the Committee on the Judiciary of the House of Representatives on H. R. 6872 and H. R. 7067, 77th Cong., 2d Sess.

[7] H. R. 32, 79th Cong., 1st Sess.

[8] Public Law No. 486, 79th Cong., 2d Sess., 60 Stat. 420.

Mr. Jennings stated (*id.* at 11911):

> * * * this bill is designed to protect trade and commerce against interference by violence, threat, coercion, or intimidation. It is brought before the Congress under and pursuant to the commerce clause of the Federal Constitution which gives Congress the power to regulate commerce among the States. The necessity for this measure grows out of the misconstruction placed upon the antiracketeering law enacted in 1934 by what is popularly known as the Byrnes opinion in the case of United States against Local 807.

Congressman Fellows declared (*id.* at 11907):

> * * * Its purpose is to protect trade and commerce against interference by violence, threats, coercion, or intimidation. It seeks to impress upon individuals who happen to hold a card of membership in some organization or other that there are obligations to recognize that other people may have certain rights. It has passed the House before by an overwhelming majority.

Other members spoke to the same effect. See *id.* at 11841 (Mr. Cox), 11900 (Mr. Hancock).

Similarly, when H. R. 653, a predecessor bill, was before the 78th Congress, Mr. Gwynne said (89 Cong. Rec. 3201):

> * * * Putting it briefly, what this bill does is to rewrite the law and leave out that exception on which the Supreme Court's

CONCLUSION

It is respectfully submitted that the decision below is erroneous, that the question presented is substantial, and that the Court should take jurisdiction of this appeal.

SIMON E. SOBELOFF,
Solicitor General.

APRIL 1955.

APPENDIX

In the United States District Court for the Southern District of Illinois, Southern District

(Docket No. 5236)

UNITED STATES OF AMERICA

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

MEMORANDUM OPINION

The Defendant Jack Green and the Labor Union Local No. 397 were found guilty by a jury of violating the Federal Anti-Racketeering Act. After the trial, motions for judgment of acquittal, new trial, and in arrest of judgment were duly filed and argued. The motions for judgment of acquittal and for new trial are denied, but the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:

1. That the Court is without jurisdiction of the offense because the facts alleged in the Indictment fail to set forth an offense against the

United States such as to give this Court jurisdiction.

2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

The main difficulty that I find with this proceeding is the charge of the Indictment, and in this connection I am concerned only with Counts One and Two, under which the jury determined each of the Defendants were guilty. The pertinent provisions of the Indictment are as follows:

> "the Defendants did * * * obstruct, delay and affect and attempt to obstruct, delay, and affect * * * interstate commerce * * * by extortion * * * by attempting to obtain from Arthur W. Terry, Jr., * * * his money in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers * * *, the attempted obtaining of said money * * * being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., * * * by the wrongful use * * * of actual and threatened force, violence and fear * * *."

The statute in question is Section 1951 of Title 18, U. S. C., commonly referred to as the Hobbs Act, or the Anti-Racketeering Act. Before arriving at my decision, I made a personal investigation as to the intent of Congress in the passage of this Act. This statute was originally passed

in 1934, and there have been surprisingly few decisions construing this statute since its original passage.

The original Act specifically excepted the activity of the use of threats or force to obtain the payment of wages by a bona fide employer to a bona fide employee. In *United States v. Local 807* (1942) 315 U. S. 521, the Supreme Court analyzed this exception in considerable detail, and held that the statute did not apply where a person had used threats of force or other violent means to either achieve the status of an employee for a member of his Union, or to secure wages for services. When the Hobbs Act was amended in 1946, no exception was made for cases where the property involved should be money demanded to be paid in the form of wages in the definition of extortion. Nevertheless, the Anti-Racketeering Act specifically provides that it is not to be construed to repeal, modify or affect the provisions of the Norris-LaGuardia Act and the Wagner Act.

When the motion to dismiss this indictment was argued, the main attack was directed to whether or not sufficient allegations were made to show that interstate commerce had been affected to any degree. Very little if anything was said by the Defendants with respect to whether the charges of the indictment constituted a crime under the construction of Section 1951 of Title 18, U. S. C. At that time I sustained the indictment because in my opinion sufficient allegations as to interstate commerce were made.

It is now contended that the Indictment does not state a cause of action within the meaning of

the above section. In the usual extortion case, the extorter is obtaining money or property of another for his own benefit. This has generally been true in the racketeering cases which have been tried within the Southern District of Illinois, the Eastern District of Illinois, and the Eastern District of Missouri. In those types of cases, the original demand is unlawful, and certainly the means to carry out the demand in those cases were unlawful and within the purview of the statute and the constitutional limits of Congress to enact statutes to protect interstate commerce. In the case at hand, I conclude that Green's original activity in "attempting to obtain from Arthur W. Terry, Jr., his money in the form of wages to be paid for imposed, unwanted, superfluous, and fictitious services of laborers" which said charge was seriously controverted, was of itself not a violation of this statute, and within his rights and responsibilities as a Union representative, which was not prohibited by this statute.

The United States Supreme Court has recently held that a demand by a Union representative for "featherbedding" is not an unfair labor practice. *American Newspaper Publishers Assn.* v. *N. L. R. B.*, 345 U. S. 100 (1953); *N. L. R. B.* v. *Gamble Enterprises*, 345 U. S. 117. (1953). It seems incongruous that Congress intended that a lawful act on the part of Green in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence (which under State law constitute only misdemeanors) can be punished as a

severe felony carrying a maximum of twenty years in the penitentiary under the Federal law.

When this Bill came before the House of Representatives it was argued in detail by the members of the Judiciary Committee, and without a dissenting voice they maintained that this particular Bill meant just what it said. It was a Bill against robbery and extortion and had nothing whatever to do with labor laws, and their provisions. For this Court now to say that when a labor organization or officer of said organization advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this Community, was a violation of this particular Act appears to me to be unreasonable.

After reading the Indictment, I concur with the decision of Judge George H. Moore, in the Eastern District of Missouri *United States of America v. Richard Kavner, et al., Defendants*, in a similar Indictment, and I conclude that the trouble in this Community and on this particular job was caused by a disagreement between the contractor and labor, and was in no wise an attempt to extort for the use of either the Union or the Defendant Green, any money or property of the contractor.

This memorandum opinion is to be filed with the Clerk of the Court, together with the written order of this Court which has been entered today arresting judgment.

(S) J. Leroy Adair,
United States District Judge.

Enter January 24, 1945.

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

Criminal No. 5236

UNITED STATES OF AMERICA

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ORDER ON MOTIONS IN ARREST OF JUDGMENT

Filed January 24, 1955, —— o'clock ——. W. Schwaner, Clerk.

This cause now coming on for the decision of the Court with respect to the pending motions following full hearing and argument thereon heretofore held by the Court;

At the close of all the evidence offered by the Government, the Defendants Jack Green and General Laborers' Local 397 of Granite City, Illinois, a Labor Union, each filed a motion for judgment of acquittal and at the close of all the evidence in the cause, each of the Defendants filed motion for judgment of acquittal, which motions the Court held under advisement; and now as to each of said four motions, after full hearing and due consideration by the Court, the same are denied.

Following the return of the verdict of the jury in this cause, the Defendants filed their separate

motions for judgment of acquittal and in the alternative for a new trial; and now the Court, after full argument thereon, upon due consideration thereof, denies each of said motions.

Following the return of the verdict in this cause, the defendants filed their separate motions in arrest of judgment, assigning as reasons therefor, among other things, the following:

> 1. * * *
>
> 2. This court is without jurisdiction of the offense.
>
> (b) The facts alleged in the Indictment failed to set forth an offense against the United States such as to give this Court jurisdiction.
>
> (c) A proper construction of the statute in question clearly indicates that it does not cover the type of activity charged in this indictment; to interpret the Act in question as covering the type of activity charged in this Indictment is to extend the jurisdiction of this Court and the power of Congress beyond their Constitutional limits.

And now this Court after full argument of the aforesaid motions in arrest of judgment, and upon due consideration thereof, doth hereby sustain the same solely on the grounds hereinabove set forth, and it is the order of the Court that the entry of the judgment herein on the verdict of the jury finding said Defendants guilty on Counts One and Two of said Indictment be and the same is hereby arrested.

Enter: (S) J. LEROY ADAIR,

Judge.

Dated January 24, 1955.

U. S. GOVERNMENT PRINTING OFFICE: 1955

> 1. That the Court is without jurisdiction of the offense because the *facts alleged in the Indictment* fail to set forth an offense against the United States such as to give this Court jurisdiction.
>
> 2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover *the type of activity charged in the Indictment*, and to interpret the act in question as covering *the type of activity charged in the Indictment* is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits. [Emphasis added.]

Thus, in words as clear as language permits, the court made plain its intention of granting a motion in arrest of judgment on the basis of its construction of the Anti-Racketeering Act. The explicit denial of the motion for judgment of acquittal highlighted the fact that the order entered was in arrest of judgment.

Each of the references to "facts" in the memorandum opinion which appellees cite as demonstrating that the district court considered evidence in granting their motion has as its source the indictment itself. Similarly, the "facts" discussed in the Government's jurisdictional statement are those set forth in the indictment. Count One[2] of the indictment charged:

---

[2] Count Two, the other count upon which appellees were found guilty, differs from Count One only as to the dates and the names of the victims alleged.

That on or about, to wit, April 13, A. D. 1953, at and adjacent to Chain of Rocks Canal, in the County of Madison, in the State of Illinois, in the Southern Division of the Southern District of Illinois and within the jurisdiction of this court, being a projected channel and conduit for traffic in interstate commerce on the Mississippi River and its tributaries,

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, ILLINOIS, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA,

hereinafter called the Defendants, did unlawfully and wilfully obstruct, delay and affect, and attempt to obstruct, delay and affect commerce as that term is defined in and by Section 1951 of Title 18, United States Code, to wit, interstate commerce, and the movement of articles and commodities in such commerce by extortion, as that term is defined in and by said Section of said United States Code, that is to say, by then and there attempting to obtain from another, to wit, one Arthur W. Terry, Jr., then doing business under the name, style and description of Terry Engineering Co., and then and there engaged in executing a contract with the United States of America for the maintenance of a levee bordering said canal and theretofore erected and constructed as a part thereof, certain property of the said Arthur W. Terry, Jr., to wit, his money, in the form of

wages to be paid for, imposed, unwanted, superfluous and fictitious services of laborers commonly known as swampers, in connection with the operation of machinery and equipment then being used and operated by said Arthur W. Terry, Jr. in the execution of his said contract for maintenance work on said levee, the attempted obtaining of said property from said Arthur W. Terry, Jr. as aforesaid being then intended to be accomplished and accomplished with the consent of said Arthur W. Terry, Jr., induced and obtained by the wrongful use, to wit, the use for the purposes aforesaid, of actual and threatened force, violence and fear made to said Arthur W. Terry, Jr., and his employees and agents then and there being; in violation of Section 1951 of Title 18, United States Code.

It is from the district court's ruling that such factual allegations in the indictment do not state an offense that the Government is appealing.

The allusion of the district court in its opinion to "Green's original activity," to which appellees point as reliance on evidence, refers, as the opinion unmistakably indicates, to the extortion as alleged in the indictment. In calling this activity "a lawful act," the court did no more than express a conclusion of law. The references to "the trouble in this Community and on this particular job" and to the practice "which had been customary and agreed to by contractors and laborers in this Community"